



**COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL**

Tobacco Enforcement Section

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[www.attorneygeneral.gov/ppd/tobacco/index](http://www.attorneygeneral.gov/ppd/tobacco/index)

**INSTRUCTIONS FOR COMPLETING THE COMMONWEALTH  
OF PENNSYLVANIA'S TOBACCO PRODUCT  
MANUFACTURER CERTIFICATION FORM**

**GENERAL INFORMATION**

**Who is required to file this Certification?**

- (1) Every tobacco product manufacturer whose cigarettes are being sold in the Commonwealth, whether directly or through any distributor, retailer, or similar intermediary.
- (2) Every tobacco product manufacturer that wants to have its cigarettes sold in the Commonwealth.

*Due to current Pennsylvania tax statutes, Roll-Your-Own (RYO) Tobacco Manufacturers are not required to file a certification at this time.*

**How is this certification used?**

The Office of Attorney General uses the information provided in the certification to determine whether a tobacco product manufacturer's brand(s) should be included in the directory published pursuant to section 301 of the Tobacco Product Manufacturer Directory Act (TPMDA), 35 P.S. § 5702.301. If a cigarette brand is not listed in the directory, it cannot be sold in Pennsylvania.

**Who should sign the certification?**

The certification must be reviewed and signed by a director or officer of the Tobacco Product Manufacturer (TPM) with the authority to bind the company.

A Power of Attorney will not be accepted

**When is an initial certification required?**

A manufacturer that wants to start selling its cigarettes in Pennsylvania must file an initial certification prior to any sales in the Commonwealth.

### **When is an annual certification required?**

Every manufacturer with sales in Pennsylvania in the prior year must file an annual certification, which shall be executed no earlier than April 15 of each year and shall be delivered to the Attorney General no later than April 30, unless that manufacturer is filing a quarterly certification.

### **When is a supplemental certification required?**

A manufacturer must file a supplemental certification when there is a change to any of the following:

- Addition of a Brand Family
- Contact information
- Address
- Factory Address
- Company organization/ownership
- Escrow information
- Registered agent (See Section 305b of the TPMDA for deadlines)
- Deletion of brands
- Change in packaging or an addition of a brand style

### **When is a quarterly certification required?**

A Non-Participating Manufacturer whose products have not previously been sold in the Commonwealth must file quarterly certifications for the first twelve months of sales in Pennsylvania.

A Non-Participating manufacturer must file quarterly certifications if required under the terms of an Assurance of Voluntary Compliance (AVC).

### **When is the certification due?**

#### Initial Certification

New tobacco product manufacturers who intend to sell cigarettes into Pennsylvania must file a certification and be included in the directory **prior** to any sales in the Commonwealth.

#### Annual Certification

Manufacturers whose cigarettes have been sold in the previous year in the Commonwealth must submit an annual certification by April 30<sup>th</sup>.

### Quarterly Certification

The certification for sales in the first calendar quarter is due May 15<sup>th</sup>, the certification for sales in the second calendar quarter is due August 15<sup>th</sup>, the certification for sales in the third calendar quarter is due November 15<sup>th</sup>, and the certification for sales in the fourth calendar quarter is due February 15<sup>th</sup> of the following year.

Quarterly certifications may be extended for additional years in accordance with the terms of an Assurance of Voluntary Compliance (AVC).

### Supplemental Certification

Manufacturers who have requested brands to be added to the Directory must file a supplemental certification **prior** to any sales of those brands in the Commonwealth.

### **When must I make my escrow payment?**

Non-Participating Manufacturers whose products have previously been sold in the Commonwealth must deposit all required escrow payments into a qualified escrow account annually **on or before April 15** of each year.

New Non-Participating Manufacturers and manufacturers subject to an Assurance of Voluntary Compliance (AVC) must make quarterly deposits as set forth below.

### **Who needs to make quarterly escrow payments?**

A Non-Participating Manufacturer whose products have not previously been sold in the Commonwealth must make quarterly payments for the first twelve months of sales in Pennsylvania. The deposit for sales in the first calendar quarter is due May 15<sup>th</sup>, the deposit for sales in the second calendar quarter is due August 15<sup>th</sup>, the deposit for sales in the third calendar quarter is due November 15<sup>th</sup>, and the deposit for sales in the fourth calendar quarter is due February 15<sup>th</sup> of the following year.

Any Manufacturer under the stipulations of an Assurance of Voluntary Compliance (AVC) must make their payments in accordance with the AVC.

### **When should I submit packaging?**

A manufacturer is required to provide sample packages or color photos showing all sides of the packs, every time it changes its packaging or creates a new brand style for the brand families for which it certifies. Please remove cigarettes from packs prior to submission.

### **Definitions:**

- (a) “Brand Family” - all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not

limited to, “menthol,” “lights,” “kings,” and “100s.” The term includes any use of a brand name, alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors or any other indicia of any product identification identical or similar to or identifiable with a previously known brand of cigarettes.

- (b) “Cigarette” - any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use and consists of or contains any of the following:
  - (1) Any roll of tobacco wrapped in paper, or in any substance not containing tobacco.
  - (2) Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette.
  - (3) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette described in paragraph (1).
- (c) “Non-Participating Manufacturer” - any tobacco product manufacturer that is not a party to the Master Settlement Agreement (MSA).
- (d) “Participating Manufacturer” - a tobacco product manufacturer that is a party to the Master Settlement Agreement (MSA).
- (e) “Qualified Escrow Fund” - an escrow arrangement with a federally chartered or State chartered financial institution that has no affiliation with any tobacco product manufacturer and has assets of at least \$1,000,000,000 in which the escrow arrangement:
  - (1) requires that the financial institution hold the principal of the escrowed funds for the benefit of the releasing parties as that term is defined in the Master Settlement Agreement; and
  - (2) prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the principal of the funds except as consistent with section 4 of the act of June 22, 2000, 35 P.S. § 5674, known as the Tobacco Settlement Agreement Act.
- (f) “Units Sold” – The number of individual cigarettes sold in this Commonwealth by the applicable tobacco product manufacturer during the year in question, as measured by taxes collected by the Commonwealth on packs bearing the tax stamp of the Commonwealth required under section 1215 of the act of March 4, 1971 (P.L. 6, No. 2), known as the Tax Reform Code of 1971.

## **SPECIFIC INSTRUCTIONS**

*Fill out the certification form completely. Do not leave any fields blank. Indicate N/A when applicable.*

*The form can be found on our website at*

*<http://www.attorneygeneral.gov/ppd/tobacco/pdf/DirActCertForm.pdf>*

### **Part 1: Tobacco Product Manufacturer's Identification**

Identify the company name and complete addresses. Provide the telephone number, fax number, and electronic mail address for the company official signing this certification. Please also provide the company web address. Identify factory addresses and names of plant managers where the cigarettes are made.

You must indicate whether this is an initial, annual, supplemental or quarterly certification by checking one of the blocks.

*If you have not previously submitted a certification, provide documents that verify your information such as Articles of Incorporation, Corporate Charters, Corporate bylaws, Operating Agreements and contracts or leases, etc.*

### **Part 2: Brand Family Identification**

***Section A is to be completed only by Tobacco Product Manufacturers that have joined the Master Settlement Agreement.***

Identify by Brand Family all of the cigarettes that you intend to sell in this Commonwealth whether directly or through any distributor, retailer, or similar intermediary.

Do not include a Brand Family in the list unless the cigarettes are to be considered yours for purposes of calculating your payments under the Master Settlement Agreement (MSA). You need to have reported sales of those brands to the Independent Auditor, in the volume and shares as determined under the MSA.

Please provide sample packages (remove cigarettes) or color photos showing all sides of the packs for the brand families identified. Submit new packages or color photos each time you change your packaging or add new brand styles.

*Provide documents to verify the information contained in Section A such as Tobacco Tax Bureau permits, trademark certifications, importers certificates, licenses, agreements, contracts, etc. At a minimum, provide FTC approved rotation plans and CDC confirmation of approved ingredient lists.*

***Section B is to be completed only by Non-Participating Manufacturers (companies that have not joined the Master Settlement Agreement).***

There are two tables, one for sales in 2004, and one for current sales. In the appropriate table, identify by Brand Family all of the following:

- (i) the name of each brand family (identify with an asterisk any brands that are no longer being sold);
- (ii) the name and address of each importer of that brand family (if applicable); and
- (iii) the name of every Pennsylvania licensed distributor for that brand family, and the number of Units Sold for that distributor.

If a brand family has been manufactured by more than one manufacturer, on a separate piece of paper provide the name and address of every other tobacco product manufacturer and the dates the brand was manufactured by each manufacturer.

Please provide sample packages (remove cigarettes) or color photos showing all sides of the packs for the brand families identified. Submit new packages or color photos each time you change your packaging or add new brand styles.

If you are NOT the US Trademark Holder of all brand families listed, explain on a separate sheet why you believe the brands are eligible to be listed.

*Provide documents to verify the information contained in Section B such as BATF Form 7501s, bills of lading, customer invoices, etc. Also provide documents such as trademark certifications, importers certificates, licenses, agreements, contracts, etc. At a minimum, provide FTC approved rotation plans, CDC confirmation of approved ingredient lists and Tobacco Tax Bureau Permits.*

***Section C is to be completed by both Participating and Non-Participating Manufacturers.***

Identify by Brand Family any additional brands, not currently on the directory, that you want added.

Please provide sample packages (remove cigarettes) or color photos showing all sides of the packs for the brand families identified. Submit new packages or color photos each time you change your packaging or add new brand styles.

*Provide documents to verify the information contained in Section B such as BATF Form 7501s, bills of lading, customer invoices, etc. Also provide documents such as trademark certifications, importers certificates, licenses, agreements, contracts, etc. At a minimum, provide FTC approved rotation plans, CDC confirmation of approved ingredient lists and Tobacco Tax Bureau Permits.*

**Part 3: Residency Status (to be completed by Non-Participating Manufacturer only)**

Unless your company is based in Pennsylvania, you must appoint an agent for service of process and provide the Attorney General with proof of that appointment. You must provide the agent's name, address, telephone number and fax number. In addition, you must attach proof of the appointment and availability of the agent.

**Part 4: Escrow Account Information (to be completed by Non-Participating Manufacturer only)**

Non-participating manufacturers must submit for approval an escrow agreement with a qualified financial institution. See the definition of "qualified escrow fund" in these instructions. If you have not done so previously, you must attach a fully executed copy of your current qualified escrow agreement and any amendments or attachments.

A copy of Pennsylvania's Model Escrow Agreement form can be found at [www.attorneygeneral.gov/ppd/tobacco/pdf/Multi-StateEscrowAgreement.pdf](http://www.attorneygeneral.gov/ppd/tobacco/pdf/Multi-StateEscrowAgreement.pdf). Any variation from the model escrow agreement may delay approval of your certification.

***Section A***

Identify the following:

- the name, address, telephone and fax number of the financial institution and the name, title and electronic mail address of a contact person authorized to conduct business on behalf of the financial institution;
- the account number of your Qualified Escrow Fund and the sub-account number for Pennsylvania.

***Section B***

In this table, you must state the dates for every deposit to or withdrawal from your escrow account. You must also state the dollar amount of each transaction and provide a running balance of the amount in the account.

You must also provide a bank statement and proof of deposit which shows the most recent deposit and the current balance.

## **Part 5: Execution by Corporate Officer or Director**

The Tobacco Product Manufacturer must certify that it is either:

- a Participating Manufacturer under the MSA or
- a Non-Participating Manufacturer in full compliance with the Tobacco Settlement Agreement Act that is resident in the Commonwealth (or has appointed a registered agent for service of process), that has established and continuously maintains a qualified escrow fund, and that has executed a qualified escrow agreement approved by the Attorney General.

The person executing the Tobacco Manufacturer Certification Form must be an authorized Officer or Director of the Tobacco Product Manufacturer. A power of attorney will not be accepted. The designee's name and title must be printed and signed.

## **GENERAL INSTRUCTIONS**

This certification must be completed in English. For all attachments, if the original is in a language other than English, a certified translation into English must be attached as well.

Any attachment must clearly indicate the section to which it corresponds.

Facsimiles are not acceptable. Mail the original Tobacco Manufacturer's Certification and a complete set of all supporting documents to:

Commonwealth of Pennsylvania  
Office of Attorney General  
Tobacco Enforcement Section  
15<sup>th</sup> Floor Strawberry Square  
Harrisburg, PA 17120

Acceptance of this certification by the Commonwealth does not waive any rights to enforce the provisions of the Tobacco Settlement Agreement Act (TSAA), 35 P.S. § 5671 et seq.